

REMARKS/ARGUMENTS

Claims 1-65 were pending in this application. Claims 1-6, 21-23, 32-49, and 54-55 have been canceled without prejudice for re-presentation in a continuing application.

Claims 7-20 and 24-31 have been revised to depend directly or indirectly from claim 50. Claim 56 has been revised to correspond to the subject matter of claim 50. Claims 57 and 58 have been revised to correct minor informalities.

Claim 62 has been revised to correct a clerical error. Support for the revision is provided at least by claim 61.

New claims 66 and 67 are dependent from claim 50. Support for claims 66 and 67 is provided at least by claims 24 and 25, respectively, as previously presented.

No new matter has been introduced, and entry of the above revised claims is respectfully requested.

The Examiner has requested an election of one of the following groups:

- I. Claims 2-31, and 57-65;
- II. Claims 2-21, 32-43, and 57-65;
- III. Claims 2-21, 44-49, and 57-65;
- IV. Claims 50-53; and
- V. Claims 54-55.

Applicants hereby elect Group IV, claims 50-53. Applicants respectfully point out their belief that revised claims 7-20, 24-31, 56-65 and new claims 66-67 also correspond to this elected Group.

An election of species to one of the following cytokines was also required:

- a) hematopoietic growth factors
- b) interleukins
- c) interferons
- d) tumor necrosis factors

- e) immunoglobulin superfamily molecules and
- f) chemokines.

Applicants respectfully point out that this requirement for an election of species appears misplaced with respect to asserted Group IV, where claims 50, 51, 53 and other claims dependent from claim 50 do not include the feature of “a recombinant nucleic acid molecule having a nucleic acid encoding a cytokine” as present in claim 52. Therefore, the attempt to require an election of species with respect to claims 50, 51, 53 and other claims dependent from claim 50 appears to be an improper attempt to deny Applicants the opportunity to pursue the full scope of the invention as encompassed by those claims.

Stated differently, Applicants regard their invention as including the subject matter of claims 50, 51, and 53. Any attempt to restrict the subject matter therein to be merely alleged “species of cytokines” would deny Applicants the ability to seek claims directed to what they regard as the invention. See *In re Weber* (580 F.2d 455, 198 USPQ 328 (CCPA 1978)) and *In re Haas* (580 F.2d 461, 198 USPQ 334 (CCPA 1978)), and the discussion at MPEP 803.02. These decisions clearly set forth that a restriction requirement cannot be used to divide a single claim.

In light of the above, Applicants respectfully submit that the requirement for an election of species is misplaced and should be withdrawn.

In the event that the requirement is maintained, Applicants hereby elect Group c) interferons with traverse for the reasons provided above.

Based upon the above election of interferons with traverse, claims 7, 9-20, 50-53, 56-65 and new claims 66-67 are readable thereon.

Appl. No. 10/772,913

Amdt. dated November 20, 2006

Reply to Office Action of September 21, 2006

PATENT

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 858-350-6108.

Respectfully submitted,



Kawai Lau, Ph.D.

Reg. No. 44,461

TOWNSEND and TOWNSEND and CREW LLP

Two Embarcadero Center, Eighth Floor

San Francisco, California 94111-3834

Tel: 858-350-6100

Fax: 415-576-0300

60918941 v1